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OST-98-4328-4

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

42177

Application of

AMERICAN AIRLINES, INC.

under 49 U.S.C. § 40109(c) for an  
exemption (Chicago-Moscow)

Docket OST-98-4328

DEPARTMENT OF TRANSPORTATION  
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ANSWER OF DELTA AIR LINES, INC.

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**August 31, 1998**

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DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

<b>Application of</b>	)	
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**ANSWER OF DELTA AIR LINES, INC.**

On August 14, 1998, American Airlines, Inc. ("American") filed an application for exemption authority to provide daily nonstop service between Chicago and Moscow. American also requested seven U. S. -Russia combination frequencies necessary to conduct its proposed service. Delta hereby submits this answer to American's application.

At the present time, all 54 U.S.-Russia frequencies are allocated. However, American argues that it should be awarded authority from the 27.5 currently dormant U.S. -Russia frequencies and 4 dormant designations. Delta objects to American's application to the extent it suggests that frequencies be taken away from Delta to fund American's service. While Delta agrees with the Department's policy not "to permit such rights to remain unused indefinitely, particularly when other carriers have firm plans to use them" (Order 97-9-2 at 2-3), the Department must make the critical distinction between U.S.-Russia

frequencies that have languished because carriers have unilaterally failed to implement service, versus U.S.-Russia frequencies, such as Delta's, that are unable to be implemented due to the actions of the Russian Ministry of Transport ("RMOT").

Delta does indeed have firm plans to utilize each and every frequency previously allocated by the Department as soon as approval is forthcoming from the RMOT. The Department is well aware of the circumstances surrounding Delta's inability to use its frequencies and has previously recognized the special status of these unused U.S.-Russia frequencies.<sup>1</sup> In a September 30, 1997 Notice of Action Taken, the Department granted Delta a waiver from the 90 day dormancy provisions of the frequency allocation Orders (Orders 96-10- 1 and 97-7-3) due to the RMOT's refusal to permit Delta to operate a bilaterally-authorized third-country code-share services to Russia. This waiver covers third-country code-share service with Austrian Airlines and Sabena. The

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<sup>1</sup> On September 9, 1997, United Airlines, Inc. ("United") filed a Complaint against the Government of the Russian Federation under 49 U.S.C. § 413 10 (formerly Section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 ("IATFPCA") requesting that the United States impose sanctions against Aeroflot based on the Russian Government's refusal to allow United to operate bilaterally-authorized third-country code-share services. Delta filed an answer in support of United's complaint. The Department approved the Complaint on February 4, 1998, but deferred action on the issue of sanctions in the hope that the impasse would be resolved through the diplomatic process. To date, it has not been resolved. Delta is hopeful that the October 1998 negotiations will result in a satisfactory resolution.

dormancy period is waived until 90 days after the date that the RMOT approves Delta's code-share service.

The frequencies held by Baltia and Continental, however, stand on different footing. Baltia received authority to operate U.S.-Russia service in May 1991. (Order 91-6-2). Since that time, Baltia has been granted numerous waivers from the requirement that it commence service within one year of certification. On August 7, 1998 it sought yet a further extension, this time suggesting it would commence service in 1999. Moreover, Baltia has not received certification from the FAA. See, "Baltia Seeks Further Delay of Start-up Pending FAA Certification", Aviation Daily, August 12, 1998. As a result, after more than seven years since obtaining authority, Baltia is still not in a position to commence U.S.-Russia service in the immediate future and its frequencies continue to go unused.

Continental applied for and received the authority and frequencies to operate its own Newark-Moscow service (Order 97-7-33), but failed to implement that service. Instead, Continental now seeks to place its code on Aeroflot's flights operating Newark/New York-Moscow.<sup>2</sup> Because code-share services between airlines of the two Parties do not count against the frequency

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<sup>2</sup> On November 6, 1997, Continental applied for authority to serve Russia pursuant to a code-share agreement with Aeroflot. Delta and United urged the Department to defer action on that application until Russia approved the bilaterally-authorized third-country code-share services. That application is still pending.

limitations under the U.S.-Russia bilateral,<sup>3</sup> Continental does not need the seven frequencies it had been allocated for direct service to operate its code-share proposal.

Thus, between Baltia's long dormant 3.5 frequencies<sup>4</sup> and the seven frequencies that are available as a result of Continental's decision to code-share with Aeroflot, there are more than sufficient frequencies available to satisfy American's request for seven frequencies. Moreover, in light of the current economic conditions in Russia, it is unlikely that either Baltia or American would be inclined to begin direct service to Russia in the immediate future. In these circumstances, Delta's firm plans to begin additional code-share service upon receipt of approval from the RMOT represent the most rational and viable means to expand U.S. carrier services to Russia and exercise the opportunities available under the bilateral.

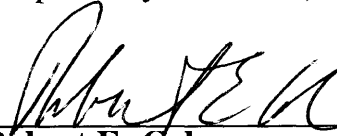
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<sup>3</sup> See, Order 96-8-48 at p. 1, citing Annexes to the Air Transport Agreement between the United States and Russia ("Furthermore, services operated under cooperative marketing arrangements, including code-sharing arrangements, between the airlines of the two Parties shall not count against the frequency limitations").

<sup>4</sup> The Department could reallocate Baltia's 3.5 frequencies to American on the condition that the frequencies be returned to Baltia in the event that Baltia was able to commence service by its proposed start date. See, e.g. Order 97-9-12.

In conclusion, should the Department grant American exemption authority to operate Chicago-Moscow service, there is no basis for the Department to take any of Delta's frequencies to fund American's service in light of the fact Delta has been prevented from operating its frequencies by the RMOT and was granted a waiver by the Department from the dormancy provisions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. Cohn", written over a horizontal line.

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August 31, 1998

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Delta Air Lines, Inc. was served this 31st day of August, 1998, on the following persons, by fax or first class mail, postage prepaid.

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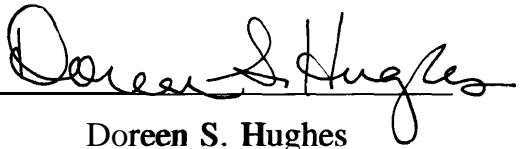
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August 31, 1998

  
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